CONTRACT #4 RFS # N/A FA # N/A

University of Tennessee

VENDOR:
University of Tennessee
Research Foundation (UTRF)



VICE PRESIDENT FOR STRATEGIC PLANNING AND OPERATIONS

August 29, 2008

RECEIVED

AUG 2 9 2008

FISCAL REVIEW

Mr. Jim White Executive Director Fiscal Review Committee 320 Sixth Avenue, North – 8th Floor Nashville, TN 37243-0057

Dear Mr. White:

The University of Tennessee is submitting for the committee's review a non-competitively bid contract with the University of Tennessee Research Foundation (UTRF) to provide administrative and programmatic support services to implement the university's biofuels initiative including the construction and operation of a pilot scale cellulosic biorefinery.

In FY 2008, the University was appropriated \$40.7 million to fund the construction of a pilot scale cellulosic ethanol biorefinery. In addition, UT was appropriated operating funds totaling \$8,250,000 million in FY 2008 and \$5,600,000 million in FY 2009 to support related operating and research costs and to establish switchgrass as the primary source of feedstock for the biorefinery. On October 11, 2007, the university received approval from the State Building Commission to make a grant of the construction funds to the UT Research Foundation to assist in the construction of the biorefinery. Since receiving this approval the university has decided to work with a different technology partner and we are in the process of working through the State Building Commission process to acknowledge this change. There is no change in the proposed agreement with UTRF as part of this initiative.

If you have questions or need additional information, please let me know.

Respectfully,

Sylvia Stranner Warris

Sylvia Shannon Davis Vice President for Strategic Planning & Operations

Attachment

c: John D. Petersen

David Millhorn

Chris-Cimino-

Anthony Haynes

Butch Peccolo

Gary Rogers

Kelly Tiller

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Universit	y of Tenne	essee								ministration	•
Contracto								or ID		IN or SSN)	
	·		arch Four	ndation (UTRF)			C	or	<u> </u>	- 62-60476	97
Service De	escription	1		-							
			ort service			const		-			ellulosic ethanol biorefinery
Cont	tract BEG			Contract END D	ate		Subrec			/endor?	CFDA#
	11/1/200			6/30/2012				N	V/A	L	N/A
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Allotmer		Cost Ce		Object Code	 	Fu		- Fui		Grant Code	Funding Subgrant Code
332. FY		State N/A	<u> </u>	N/A Federal	In	N/.		-7		N/A Other	N/A TOTAL Contract Amoun
FY 2009	1	State		Federal	1111	terue	partmenta	+		Other	\$ 626,000.00
FY 2010			-		 			\dashv			1,504,000.00
FY 2011					_					*	2,596,000.00
FY 2011					-			\dashv			
FY ZUIZ					├—			+		<u></u>	2,774,000.00
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TOTAL:	\$		\$	-	\$	······································			<u> </u>	_	\$ 7,500,000.00
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— COMPLETE FOR AMENDMENT Base Contract & TH Prior Amendments			THIS	S Amendment ONLY	Sylvia Shannon Davis, 865-974-2244						
FY 2009					Staf	te Ag	ency Budg	get O	fficer	Approval	
FY 2010							1.45				0
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											T.C.A., § 9-4-5113, that there is ated expenditure is required to be
					paid t	that is	not otherwis	se enc	cumber	ed to pay obliga	tions previously incurred)
TOTAL:	\$	7,500,000.0	0 \$	_							
End Date		30/2012									
Contractor	Ownersł	ip (complet	e only for h	pase contracts with	contra	act#p	refix: FA or	GR)	N/A		
African	American		Person	ı w/ Disability		Hispa	nic		Sm	all Business	NOT disadvantaged
Asian		Female	Female		Native	American		OTHER minority/o		disadvantaged—	
Contractor	Selection	n Method (complete f	or ALL base contra	cts	N/A to	amendmen	its or c	delegat	ed authorities)	
	RFP Competitive			ve Negotiation Altern				Alternati	ve Competitive Method		
X Non-Competitive Negotiation Negotiation				on w/	n w/ Government(eg,ID,GG,GU) Other						
Procureme	nt Proces	s Summar	y (comple	te for Alternative M	ethod	, Com	petitive Neg	jotiatio	on, Non	-Competitive Ne	egotiation, OR Other)

Although the university has acquired a new technology partner since receiving approval from the State Building Commission, the role of UTRF has not changed and we are currently in the process of working with the State Building Commission to acknowledge this change.

THE UNIVERSITY OF TENNESSEE REQUEST: NON-COMPETITIVE CONTRACT

APPROVED:	
UT System Office Approval	ate

	if information provided is inc	tion that <u>must</u> be individually detailed or addressed <u>as required</u> . A complete, non-responsive, or does not clearly address each of the
1) UT Tracking Number		
2) Campus/Institute Name	University of Tennessee Univ	versity-wide Administration
3) Short Description:		rogrammatic support services to implement the university's biofuels uction and operation of a pilot scale cellulosic ethanol biorefinery
4) Proposed Vendor:	Name:	UT Research Foundation
	Vendor Number:	107614
	Vendor ID:	62-6047697
5) Contract Start Date:		November 1, 2008
6) Contract End Date IF all Op	otions to Extend the Contract	t are Exercised: June 30, 2012
7) Total Maximum Cost IF <u>all</u> (Options to Extend the Contra	act are Exercised: \$7,500,000
8) Approval Criteria: (selectione)	use of Non-Competitive Ne	egotiation is in the best interest of the university
	only one uniquely qualified	d service provider able to provide the service
9) Detailed Description of Ser	vice to be Acquired :	
Tennessee as a national leader in establish swtichgrass as the prima	n the development of alternative ary source of feedstock for this upport services required from U	onstruction of a cellulosic ethanol biorefinery to aid in establishing e energy sources. This historic initiative also includes funding to project. This contract provides funds to support the associated JTRF to support UT's biofuels initiative including the operating and
10) Explanation of the Need for	or Requirement Placed on t	he Procuring Agency to Acquire the Service:

On October 11, 2007, the University received approval from the State Building Commission to make a grant to the UT Research Foundation for the purpose of constructing a pilot scale cellulosic ethanol biorefinery. In addition to capital funding, there are also operating costs associated with the construction of the biofinery. Since receiving this approval, the university has decided to work with a different technolog partner and we are in the process of working through the State Building Commission process to acknowledge this change. Because there is no change in UTRF's role in the biofuls iniaitive, we are proceeding with this contract to provide UTRF with the necessary funding required to manage this part of the project.

11) Explanation of Whether the Procuring Agency Bought the Service in the Past, & if so, What Procurement Method It Used:

This is a new initiative for the University of Tennessee and we are utilizing the services of the UT Research Foundation to assist with portions of this project.

12) Name & Address of the Proposed Vendor/Contractor(s):

(not required if proposed contractor is a state education institution)

UT Research Foundation

1534 White Avenue, Suite 403

Knoxville, TN 37996-1527

13) Evidence of the Proposed Vendor/Contractor's Experience and Length of Experience Providing the Service:

UTRF is a not-for-profit public benefit corporation formed to promote and support the university's research mission. The UT Research Foundation was organized in 1934 as the UT Research Corporation (UTRC). UTRC was reorganized and renamed UTRF in 2003.

- 14) Documentation of Office for Information Resources Endorsement: N/A (required only if the subject service involves information technology)
- 15) Documentation of Department of Personnel Endorsement. (required only if the subject service involves training for state employees).
- 16) Documentation of State Architect Endorsement (required only if the subject service involves/construction or real property related services).
- 17) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives:

Because the UT Research Foundation is the entity authorized by the State Building Commission to assist the University in the construction of a pilot scale cellulosic ethanol biorefinery, the associated operating costs will be incurred through the UT Research Foundation making them the only viable entity to contract with for this effort.

18) Justification of Why the University Should Use Non-Competitive Negotiation Rather Than a Competitive Process: (Being the "only known" or "best" service provider to perform the service as desired will not be deemed adequate justification.)

Due to the nature of the services acquired under this contract, services that support the construction of a pilot scale cellulosic ethanol biorefinery, the use of the UT Research Foundation is the only realistic option given they are the entity authorized to receive a grant from the University for the construction of this facility.

CONTRACT

between

THE UNIVERSITY OF TENNESSEE and UNIVERSITY OF TENNESSEE RESEARCH FOUNDATION

This contract is made and entered into by the University of Tennessee, hereinafter referred to as "UT" or "University", and the University of Tennessee Research Foundation, hereinafter referred to as "UTRF" or "Contractor".

WHEREAS, UTRF is a not-for-profit public benefit corporation formed to promote, support, and carry out UT's research mission, to enhance the competitive position of UT for research and development funding, to facilitate expanded research and development activities at UT, and to facilitate the commercialization of UT research outcomes and the transfer of research-generated technology from UT to commercial and industrial enterprises in furtherance of the economic development of the State of Tennessee.

A. SCOPE OF SERVICES

The University, acting as stewards for the State of Tennessee's interest in developing a cellulosic biofuels industry in Tennessee, seeks the following services from UTRF in support of this research and economic development initiative:

- Administrative, management and professional support services, including loaned employees, associated with the oversight of the construction and operation of a R&D pilot scale cellulosic ethanol biorefinery and switchgrass utilization demonstration project. Services include, but are not limited to, project oversight, facilities operations, and marketing services as mutually agreed upon.
- 2. Management of technology development and commercialization activities.

Services provided by UTRF under this Contract shall be planned, structured, and delivered to integrate, to the maximum extent practical, with the overall mission, goals, and program of the UT Biofuels Initiative being carried out simultaneously by UT.

The parties anticipate that UTRF will provide portions of this scope of services through-its wholly-owned subsidiary, Genera Energy-LLC ("Genera"), and through Genera with its third-party collaborators.

In fulfilling its responsibilities, UTRF shall provide to the UT Executive Vice President and Chief Operating Officer and the UT Biofuels Initiatives Director of External Operations:

- a. Project schedule detailing significant events for completion by UTRF along with responsibilities expected of others involved in this project.
- b. Monthly written progress report to supplement weekly informal communications describing the project's progress.
- c. Unaudited monthly accounting reports.

B. CONTRACT TERM

This contract shall be effective for the period commencing November 1, 2008 and ending on June 30, 2012. The contract term may be extended by written agreement executed by all parties hereto and approved by the appropriate University officials in accordance with applicable State laws and regulations.

C. PAYMENT TERMS AND CONDITIONS

- C.1. <u>Maximum Liability</u>. In no event shall the maximum liability to the University under this Contract exceed \$7,500,000. The maximum liability represents available funds for payment to UTRF and does not guarantee payment of any such funds to UTRF under this Contract unless the University requests work and UTRF performs said work.
- C.2. <u>Payment Methodology</u>. UTRF shall be compensated based on the service requirements authorized by the University in a total amount not to exceed the Contract Maximum Liability established in Section C.1. Payments to UTRF by the University shall be made as follows:
 - a. The University shall reimburse UTRF each month for actual expenses, beyond those costs currently funded through other agreements with the University, for the administrative, management and professional support service functions associated with the oversight of the construction and operation of a pilot scale cellulosic ethanol biorefinery and switchgrass utilization demonstration, and costs of operating these research, development and demonstration facilities, separately or in collaboration with others in accordance with Exhibit A. These functions include, but are not be limited to, personnel cost for project oversight, management of technology-development and commercialization, administrative and professional services, and support staff; patent, copyright, and other intellectual property activities; normal office operating costs such as

- routine printing, communications, and supplies costs; equipment purchases; project related travel expenses; and project operating costs.
- b. Exhibit A provides an estimated allocation of cost by expenditure category and by fiscal year. The University shall in consultation with the UTRF review planned expenditures on a quarterly basis and may mutually agree to changes in maximum planned expenditures by category and fiscal year not to exceed the maximum liability as specified in Section C.1.
- C.3. <u>Invoice Requirements</u>. UTRF shall submit invoices to UT no more often than monthly, with all necessary supporting documentation for services performed and expenses incurred under Section C.2.
- C.4. <u>Communications</u>. Any questions regarding the scope of services, invoice processing, and/or compensation shall be addressed to:

Dr. Kelly Tiller UT Biofuels Initiative Director, External Operations 2506 Jacob Drive Knoxville, TN 37996-4570 Phone: (865) 946-1130

Fax: (865) 946-1109

D. STANDARD TERMS AND CONDITIONS

- D.1. The University is not bound by this Contract until it is approved by the appropriate University official(s) indicated on the signature page of this Contract.
- D.2. This Contract may be modified only by a written amendment that has been executed and approved by the appropriate parties as indicated on the signature page of this Contract.
- D.3. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the University.
- D.4. Unless otherwise indicated on the reverse, if this Contract provides for reimbursement for travel, meals or lodging, such reimbursement must be made in accordance with University travel policies.
- D.5. The Contractor warrants that no part of the total Contract amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor, or consultant to Contractor in connection with any work

contemplated or performed relative to this Contract, and that no employee or official of the State of Tennessee holds a controlling interest in the Contractor. If the Contractor is an individual, the Contractor certifies that he/she is not presently employed by the University or any other agency or institution of the State of Tennessee; that he/she has not retired from or terminated such employment within the past six months; and that he/she will not be so employed during the term of this Contract.

For avoidance of doubt, the parties recognize that UTRF is staffed by UT employees who have no ownership or other equity financial interest in UTRF. The parties further recognize that Genera's Board includes UT employees and its officers include UT employees, but that no individual has any ownership or other equity financial interest in Genera.

- D.6. The Contractor shall maintain documentation for all charges against the University under this Contract. The books, records and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment, and shall be subject to audit, at any reasonable time and upon reasonable notice, by the University or the State of Tennessee Comptroller of the Treasury, or their duly appointed representatives. These records shall be maintained in accordance with generally accepted accounting principles.
- D.7. No person on the grounds of disability, age, race, color, religion, sex, national origin, veteran status or any other classification protected by Federal and/or Tennessee State constitutional and/or statutory law shall be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract. The Contractor shall, upon request, show proof of such non-discrimination, and shall post in conspicuous places, available to all employees and applicants, notice of nondiscrimination.
- D.8. The Contractor, being an independent contractor, agrees to carry adequate public liability and other appropriate forms of insurance, and to pay all taxes incident to this Contract. The University shall have no liability except as specifically provided in this Contract.
- D.9. The Contractor shall comply with all applicable Federal and State laws and regulations in the performance of this Contract.
- D.10. This Contract shall be governed by the laws of the State of Tennessee, which provide that the University has liability coverage solely under the terms and limits of the Tennessee Claims Commission Act.
- D.11. The Contractor shall avoid at all times any conflict of interests between its duties and responsibilities as a Contractor and its interests outside the scope of any

current or future Contracts. The following principles define the general parameters of a conflict of interests prohibited by the University:

- Contractor's outside interests shall not interfere with or compromise its judgment and objectivity with respect to its duties and responsibilities to the University.
- b. A Contractor shall not make or influence University decisions or use University resources in a manner that results in:
 - Financial gain outside any current or future Contracts for either the Contractor or his/her relatives or
 - Unfair advantage to or favored treatment for a third party outside the University.
- c. A Contractor's outside financial interests shall not affect the design, conduct, or reporting of research.

The Contractor certifies that it has no conflicts of interests and has disclosed in writing (including in Section D.5 above) the following:

- a. Any partners or employees of the Contractor who are also employees of the University.
- b. Any relatives of the Contractor's partners or employees who work for the University.
- c. Any outside interest that may interfere with or compromise his/her judgment and objectivity with respect to his/her responsibilities to the University.
- D.12. If the Contractor fails to perform properly its obligations under this Contract or violates any term of this Contract, the University shall have the right to terminate this Contract immediately and withhold payments in excess of fair compensation for completed services. The Contractor shall not be relieved of liability to the University for damages sustained by breach of this Contract by the Contractor.
- D.13. Unless otherwise agreed upon, it is understood by the Contractor that the University will possess all rights to any creations, inventions, other intellectual property, and materials, including copyright or patents in the same, which arise out of, are prepared by, or are developed in the course of the Contractor's performance under this Contract by University employees or by UTRF loaned employees. The Contractor and the University acknowledge and agree that the Contractor's work under this Contract shall belong to the University as "workmade-for-hire" (as such term is defined in U.S. Copyright Law).

Under the University's policy on patents, copyrights and other intellectual property, such intellectual property shall be assigned to UTRF for management, protection, technology transfer and commercialization.

- D.14. For personal, professional, and consultant services, the Contractor shall submit brief, periodic progress reports to the University as requested.
- D.15. In compliance with the requirements of Chapter 878, Public Acts of 2006 of the State of Tennessee, for any contract for goods or services purchased by the University, the Contractor hereby attests that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performances of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the United States in the performance of the Contract.

In witness of their acceptance of the terms of this agreement, the parties have had this Contract executed by their duly authorized representatives:

FOR UT Research Foundation	FOR University of Tennessee
Signature – Authorized Official	Signature – Authorized Official
Name (Printed)	Name (Printed)
Title	Title
Address	Department Name
	Responsible Account (if applicable)
	Telephone Number
Telephone Number	
SSN or Federal Identification Number	

UT/UT RESPARCH FOUNDANION BIOFUELS INFIATIVE

BUDGET SUMMARY

TOTAL	750,000.00 1,150,000.00 2,522,000.00 2,475,000.00 603,000.00	7,500,000.00
FY2012	194,000.00 \$ 285,000.00 1,142,000.00 925,000.00	2,774,000.00 \$
FY 2011	\$ 194,000.00 \$ 285,000.00 917,000.00 1,000,000.00 200,000.00	626,000.00 \$ 1,504,000.00 \$ 2,596,000.00 \$ 2,774,000.00 \$ 7,500,000.00
FY 2010	198,000.00 305,000.00 376,000.00 500,000.00	1,504,000.00
FY 2009	\$ 164,000.00 \$ 275,000.00 87,000.00 50,000.00 50,000.00	\$ 626,000.00 \$
ı	pport rofessional Fees sts nt Operating ing	1 11
	Administrative Support Legal and Other Professional Fees SUD Operating Costs PDU and Pilot Plant Operating Contingency Funding	TOTALS